

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86353102
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86353102/large
LITERAL ELEMENT	PRECISION GUIDED SELLING
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
<u>I. Non-similarity of the Marks</u>	
<p>The examining attorney has asserted that the marks of the applicant and cited registrant “are similar in sound and commercial impression as a result of the wording PRECISION GUIDED, which is the dominant literal component of the marks.”</p> <p>While the analysis of the commercial impression of a given mark may include a determination of the mark’s dominant components (see TMEP 1207.01(b)(viii)), the sound of a mark is analyzed “in its entirety” without any such “dominant components” determination, (see TMEP 1207.01(b)(iv)). When viewed in their entirety, applicant’s and registrant’s marks yield significant differences in their respective sounds. Applicant’s PRECISION GUIDED SELLING mark defines a total of six (6) phonetic syllables, namely, PRE-CI-SION GUID-ED SELL-ING. In stark contrast, registrant’s PRECISION-GUIDED COMMUNICATIONS mark defines a total of total of ten (10) phonetic syllables, namely, PRE-CI-SION GUID-ED COMM-UN-I-CA-TIONS. Thus, the differences in sound between applicant’s mark and that of the registrant support a determination that the marks are not confusingly similar.</p> <p>The examining attorney has asserted that the marks of the parties are similar in commercial impression as a result of the wording PRECISION GUIDED, which is the dominant literal component of the marks. Thus, per the examining attorney, the wording PRECISION GUIDED is entitled to more weight than the wording “SELLING” in applicant’s mark and that the wording PRECISION-GUIDED is entitled to more weight than the wording “COMMUNICATIONS” in the registered mark since the SELLING and COMMUNICATONS terms are “highly descriptive” of the subject matter of the respective services.</p>	

Nonetheless, if the common element of two marks is “weak” in that it is generic, descriptive, or highly suggestive of the named goods or services, it is unlikely that consumers will be confused unless the overall combinations have another commonality. *See, e.g., In re Bed & Breakfast Registry*, 229 USPQ 818, 819 (Fed. Cir. 1986) (reversing TTAB’s holding that contemporaneous use of BED & BREAKFAST REGISTRY for making lodging reservations for others in private homes, and BED & BREAKFAST INTERNATIONAL for room booking agency services, is likely to cause confusion, because, *inter alia*, the descriptive nature of the shared wording weighed against a finding that the marks are confusingly similar).

In both applicant’s and registrant’s marks, the combined wording of PRECISION and GUIDED is suggestive of the accurate or precise method through which the respective selling and communications services are provided. Having no other commonality between the two marks (i.e., no commonality regarding the respective wording SELLING and COMMUNICATIONS), it is thus unlikely that consumers will be confused.

Such weakness of the combined PRECISION and GUIDED wording of applicant’s and registrant’s marks is further evidenced by the presence of third party registrations or common law uses of the wording. Again, the wording is used in various service industries, as illustrated by example, by the following US Trademark Applications and/or Registrations: 1) US TM Reg. No. 4594575, PRECISION GUIDED THERAPY; 2) US TM App. Ser No. 85520764, PRECISION GUIDED MUSICIANS; and 3) US TM Reg. No 4095275, PRECISION-GUIDED COMMUNICATIONS (respective Exhibits A, B and C attached hereto); and as illustrated in the internet printouts attached to applicant’s previous reply: 4) PRECISION GUIDED SURGERY (<http://pgsglobal.net/>); and 5) PRECISION GUIDED NUTRITION (<http://www.businessescalifornia.com/c/business/precision-guided-nutrition-inc/C2295978>).

The examining attorney has asserted that “the weakness or dilution of a particular mark is generally determined in the context of the number and nature of similar marks *in use in the marketplace* in connection with *similar* goods and/or services.” The examining attorney has further asserted that evidence of weakness or dilution consisting solely of third-party registrations is generally entitled to “little weight” in determining the strength of a mark because such registrations do not establish that the registered marks identified therein are in *actual use* in the marketplace or that consumers are accustomed to seeing.

In response to the former, applicant submits that the foregoing third-party registrations and uses may nonetheless be relevant to show that a mark or a portion of a mark is descriptive, suggestive, or so commonly used that the public will look to other elements to distinguish the source of the goods or services. *See, e.g., Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.* 116 USPQ2d 1129 (Fed. Cir. 2015). Thus, properly used in this limited manner, third-party registrations are similar to dictionaries showing how language is generally used. *See, e.g., Tektronix, Inc. v. Daktronics, Inc.*, 189 USPQ 693, 694-95 (C.C.P.A. 1976); *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *United Foods Inc. v. J.R. Simplot Co.*, 4 USPQ2d 1172, 1174 (TTAB 1987).

In response to both the former and latter, applicant submits the following additional third party uses of the PRECISION GUIDED wording: 1) PRECISION GUIDED MARKETING LLC (<http://www.manta.com/c/mtecsv4g/precision-guided-marketing-llc>, Exhibit D); 2) PRECISION GUIDED MARKETING INC (<http://www.manta.com/c/mm7777n/precision-guided-marketing-inc>, Exhibit E); and 3) PRECISION GUIDED MARKETING, LLC (<http://www.bizapedia.com/md/PRECISION-GUIDED-MARKETING-LLC.html>, Exhibit F). Each of the foregoing, relating to marketing, exemplifies a *use in the marketplace* in connection with services *similar* to those of the applicant and registrant.

The foregoing third party uses thus contradict the examining attorney’s conclusion relating to the strength of the cited registration based upon her search of the Office database for marks featuring the wording “PRECISION GUIDED” in connection with business services or educational services.

Thus, because the foregoing examples represent uses in the marketplace that consumers are

accustomed to seeing, the resulting conclusion of the weakness of the PRECISION and GUIDED word combination cannot be discounted or given only “little weight.” It thus follows that the addition of the wording SELLING and COMMUNICATIONS to the respective marks is sufficient to avoid a likelihood of confusion because the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is weak or diluted. *See, e.g., Citigroup Inc. v. Capital City Bank Group, Inc.*, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011) (affirming TTAB’s holding that contemporaneous use of applicant’s CAPITAL CITY BANK marks for banking and financial services, and opposer’s CITIBANK marks for banking and financial services, is not likely cause confusion, based, in part, on findings that the phrase “City Bank” is frequently used in the banking industry and that “CAPITAL” is the dominant element of applicant’s marks, which gives the marks a geographic connotation as well as a look and sound distinct from opposer’s marks).

The Court of Appeals for the Federal Circuit and the Trademark Trial and Appeal Board have recognized that merely descriptive and weak designations may be entitled to a narrower scope of protection than an entirely arbitrary or coined word. *See Juice Generation, Inc. v. GS Enters. LLC*, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015); *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005); *Giersch v. Scripps Networks, Inc.*, 90 USPQ2d 1020, 1026 (TTAB 2009); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1957-58 (TTAB 2006); *In re Cent. Soya Co.*, 220 USPQ 914, 916 (TTAB 1984). In view of the foregoing, applicant respectfully submits that applicant’s and registrant’s marks are not confusingly similar.

II Non-similarity of the Services

The examining attorney has submitted Internet evidence which consists of third party advertising. However, not all of this evidence establishes that the same entity commonly provides marketing analysis services as well as business training in the field of sales improvement and methods under the same mark or that these services are sold or provided through the same trade channels and used by the same classes of consumers in the same fields of use.

For example, the examining attorney provided a URL for <http://www.dragonsearchmarketing.com/audits-analysis/web-traffic-analysis/> purporting to show “advertising marketing analysis services as well as training services” originating from the same. Applicant notes that the examining attorney has merely recited “training services” in the foregoing recitation without relating those training services with those provided by applicant. Assuming, arguendo, that the examining attorney was reciting applicant’s BUSINESS TRAINING IN THE FIELD OF SALES METHODS AND SALES IMPROVEMENT, the Dragon Search website of the URL includes no such reference.

While the website of the URL recites “digital marketing services” and “training and workshops,” a review of the web site by applicant yielded that such training and workshops did not include sales training, but instead included “Social Media Marketing Training,” “SEO Training,” “Digital Advertising Training,” “Google Analytics Training” and a “Content Creation & Marketing Workshop.” As such, the Dragon Search web site does not support the examining attorney’s assertion that applicant’s and registrants services typically originate from a common source .

The examining attorney also provided a URL for <http://marketingg2.com/company/> purporting to show “advertising marketing analysis and business training services” originating from the same source. Applicant notes that the examining attorney has merely recited “business training services” in the foregoing recitation without relating those training services with those provided by applicant. Assuming, arguendo, that the examining attorney was reciting applicant’s BUSINESS TRAINING IN THE FIELD OF SALES METHODS AND SALE IMPROVEMENT, the Marketing G2 website of the URL includes no such reference.

While the website of the URL recites “marketing, analysis, training and site hosting,” a review of the web site by applicant yielded that such training did not include sales training. As such, the Marketing G2 web site does not support the examining attorney’s assertion that applicant’s and registrants services typically originate from a common source.

The examining attorney also provided a URL for <http://www.amcagroup.com/expertise/> purporting to show “marketing analysis and business training services” from the same source. Applicant again notes that the examining attorney has merely recited “business training services” in the foregoing recitation without relating those training services with those provided by applicant. Assuming, arguendo, that the examining attorney was reciting applicant’s BUSINESS TRAINING IN THE FIELD OF SALES METHODS AND SALES IMPROVEMENT, the AMCA Group website of the URL includes no such reference.

While the website of the URL recites “events and training,” a review of the web site by applicant yielded that such training merely included “sales meetings” without any further explanation. It is thus unclear from the website whether these “sales meetings” comprise an “event” or some type of “training.” Assuming, arguendo, that the sales meetings comprises “training,” the web site provides no detail of this training. As such, the AMCA Group web site does not support the examining attorney’s assertion that applicant’s and registrants services typically originate from a common source .

Applicant notes that the examining attorney has attached screen shots for web sites, namely, www.officesuitestrategies.com and www.aspireconsultingpro.com, without providing any supporting explanation or arguments relating to these websites within her final action. Applicant thus respectfully requests that the examining attorney provide, within the written record, the analysis underlying these two exhibits.

Assuming that these two web sites were provided in further support of the examining attorney’s “similarity of goods/services” arguments, the Aspire Consulting website provides no recitation of applicant’s sales training whatsoever. As such, the Aspire Consulting web site does not support the examining attorney’s assertion that applicant’s and registrants services typically originate from a common source.

Applicant acknowledges that the examining attorney has also attached evidence from the USPTO’s X-Search database consisting of a number of third-party registrations purporting to show “that the services listed therein, namely marketing analysis, business training and educational services, are of a kind that may emanate from a single source under a single mark.” However, applicant notes that the examining attorney has merely recited “business training and educational services” in the foregoing recitation without relating those training services to those provided by applicant. Assuming, arguendo, that the examining attorney was reciting applicant’s BUSINESS TRAINING IN THE FIELD OF SALES METHODS AND SALES IMPROVEMENT, many of the third party registrations cited by the examining attorney include no such same or similar recitation.

For example, the following registrations cited by the examining attorney fail to recite SALES METHOD AND SALES IMPROVEMENT related training (or anything involving sales training): registration no. 3595873 for the mark SUPPORTFUNCTIONS; registration no. 3937128 for the mark STRATEGIC MARLETING RESULTANTS; AND registration no 4628016 for the mark ENABLING EXPERIENCES THAT MATTER; REGISTRATION NO. 4749183 for the mark VISION SURROGATE. As such, the cited registrations do not support the examining attorney’s assertion that applicant’s and registrants services typically originate from a common source .

With further regard to same or similar services, the examining attorney has asserted that the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. However, circumstances suggesting care in purchasing may nonetheless tend to minimize the likelihood of confusion. *See, e.g., In re N.A.D., Inc.*, 224 USPQ 969, 971 (Fed. Cir. 1985) (concluding that, because only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED); *In re Homeland Vinyl Prods., Inc.*, 81 USPQ2d 1378, 1380, 1383 (TTAB 2006).

Applicant notes that the examining attorney has attached trademark registrations, i.e. registration no. 2951125 for the mark REAL TIME INTELLIGENCE FOR PRECISION GUIDED SYSTEMS;

registration no 2959205 for the mark SWCE REAL TIME INTELLIGENCE FOR PRECISION GUIDED SYSTEMS; registration no. 4594575 for the mark PRECISION GUIDED THERAPY; and registration no. 4594674 for the mark PG PRECISION GUIDED, without providing any supporting explanation or arguments relating to these registrations within her final action. Applicant thus respectfully requests that the examining attorney provide, within the written record, the analysis underlying these four exhibits.

III. Final Action Premature

Final action is appropriate when a clear issue has been developed between the examining attorney and the applicant, i.e., the examining attorney has previously raised all outstanding issues and the applicant has had an opportunity to respond to them. *TMEP* 714.03. In view of the examining attorney's unsupported exhibits, namely the aforementioned web sites and registrations attached to the final action without any underlying argument or explanation, applicant respectfully submits that such exhibits raise issues to which applicant has not yet had the opportunity to respond.

Applicant, while the application remains pending before the examining attorney, *TMEP* 714.06, thus respectfully requests that she issue a new action providing arguments underlying the exhibits and/or otherwise explaining them and making them properly of record within the present application.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_7212820277-20151204232512379258_.EXHIBIT_A.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\863\531\86353102\xml8\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\863\531\86353102\xml8\RFR0003.JPG
ORIGINAL PDF FILE	evi_7212820277-20151204232512379258_.EXHIBIT_B.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\863\531\86353102\xml8\RFR0004.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\863\531\86353102\xml8\RFR0005.JPG
ORIGINAL PDF FILE	evi_7212820277-20151204232512379258_.EXHIBIT_C.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\863\531\86353102\xml8\RFR0006.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\863\531\86353102\xml8\RFR0007.JPG
ORIGINAL PDF FILE	evi_7212820277-20151204232512379258_.EXHIBIT_D.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\863\531\86353102\xml8\RFR0008.JPG
ORIGINAL PDF FILE	evi_7212820277-20151204232512379258_.EXHIBIT_E.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\863\531\86353102\xml8\RFR0009.JPG

ORIGINAL PDF FILE	evi_7212820277-20151204232512379258 . EXHIBIT F.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\863\531\86353102\xml8\RFR0010.JPG
DESCRIPTION OF EVIDENCE FILE	Exhibits A, B and C are printouts of US trademark registrations supporting trademark weakness arguments made within the Request. Exhibits D, E and F are printouts of internet websites supporting trademark weakness arguments made within the Request.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/David A. Gottardo/
SIGNATORY'S NAME	David A. Gottardo
SIGNATORY'S POSITION	Attorney of record, IL and WI bar member.
SIGNATORY'S PHONE NUMBER	708-763-9526
DATE SIGNED	12/04/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Dec 04 23:49:57 EST 2015
TEAS STAMP	USPTO/RFR-XX.XXX.XXX.XX-2 0151204234957590213-86353 102-540ae122f6b2377795c44 b112af9b8c943b0c163a9b298 d81a5a24c1deedd643-N/A-N/ A-20151204232512379258

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **86353102** PRECISION GUIDED SELLING(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86353102/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

I. Non-similarity of the Marks

The examining attorney has asserted that the marks of the applicant and cited registrant “are similar in sound and commercial impression as a result of the wording PRECISION GUIDED, which is the dominant literal component of the marks.”

While the analysis of the commercial impression of a given mark may include a determination of the mark’s dominant components (see TMEP 1207.01(b)(viii)), the sound of a mark is analyzed “in its entirety” without any such “dominant components” determination, (see TMEP 1207.01(b)(iv)). When viewed in their entireties, applicant’s and registrant’s marks yield significant differences in their respective sounds. Applicant’s PRECISION GUIDED SELLING mark defines a total of six (6) phonetic syllables, namely, PRE-CI-SION GUID-ED SELL-ING. In stark contrast, registrant’s PRECISION-GUIDED COMMUNICATIONS mark defines a total of total of ten (10) phonetic syllables, namely, PRE-CI-SION GUID-ED COMM-UN-I-CA-TIONS. Thus, the differences in sound between applicant’s mark and that of the registrant support a determination that the marks are not confusingly similar.

The examining attorney has asserted that the marks of the parties are similar in commercial impression as a result of the wording PRECISION GUIDED, which is the dominant literal component of the marks. Thus, per the examining attorney, the wording PRECISION GUIDED is entitled to more weight than the wording “SELLING” in applicant’s mark and that the wording PRECISION-GUIDED is entitled to more weight than the wording “COMMUNICATIONS” in the registered mark since the SELLING and COMMUNICATONS terms are “highly descriptive” of the subject matter of the respective services.

Nonetheless, if the common element of two marks is “weak” in that it is generic, descriptive, or highly suggestive of the named goods or services, it is unlikely that consumers will be confused unless the overall combinations have another commonality. *See, e.g., In re Bed & Breakfast Registry*, 229 USPQ 818, 819 (Fed. Cir. 1986) (reversing TTAB’s holding that contemporaneous use of BED & BREAKFAST REGISTRY for making lodging reservations for others in private homes, and BED & BREAKFAST INTERNATIONAL for room booking agency services, is likely to cause confusion, because, inter alia, the descriptive nature of the shared wording weighed against a finding that the marks are confusingly similar).

In both applicant’s and registrant’s marks, the combined wording of PRECISION and GUIDED is suggestive of the accurate or precise method through which the respective selling and communications services are provided. Having no other commonality between the two marks (i.e., no commonality regarding the respective wording SELLING and COMMUNICATIONS), it is thus unlikely that consumers will be confused.

Such weakness of the combined PRECISION and GUIDED wording of applicant’s and registrant’s marks is further evidenced by the presence of third party registrations or common law uses of the wording. Again, the wording is used in various service industries, as illustrated by example, by the following US Trademark Applications and/or Registrations: 1) US TM Reg. No. 4594575, PRECISION GUIDED THERAPY; 2) US TM App. Ser No. 85520764, PRECISION GUIDED MUSICIANS; and 3) US TM Reg. No 4095275, PRECISION-GUIDED COMMUNICATIONS (respective Exhibits A, B and C attached hereto); and as illustrated in the internet printouts attached to applicant’s previous reply: 4) PRECISION GUIDED SURGERY (<http://pgsglobal.net/>); and 5) PRECISION GUIDED NUTRITION (<http://www.businessescalifornia.com/c/business/precision-guided-nutrition-inc/C2295978>).

The examining attorney has asserted that “the weakness or dilution of a particular mark is generally determined in the context of the number and nature of similar marks *in use in the marketplace* in connection with *similar* goods and/or services.” The examining attorney has further asserted that evidence of weakness or dilution consisting solely of third-party registrations is generally entitled to “little weight” in determining the strength of a mark because such registrations do not establish that the registered marks identified therein are in *actual use* in the marketplace or that consumers are

accustomed to seeing.

In response to the former, applicant submits that the foregoing third-party registrations and uses may nonetheless be relevant to show that a mark or a portion of a mark is descriptive, suggestive, or so commonly used that the public will look to other elements to distinguish the source of the goods or services. *See, e.g., Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.* 116 USPQ2d 1129 (Fed. Cir. 2015). Thus, properly used in this limited manner, third-party registrations are similar to dictionaries showing how language is generally used. *See, e.g., Tektronix, Inc. v. Daktronics, Inc.*, 189 USPQ 693, 694-95 (C.C.P.A. 1976); *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *United Foods Inc. v. J.R. Simplot Co.*, 4 USPQ2d 1172, 1174 (TTAB 1987).

In response to both the former and latter, applicant submits the following additional third party uses of the PRECISION GUIDED wording: 1) PRECISION GUIDED MARKETING LLC (<http://www.manta.com/c/mtecsv4g/precision-guided-marketing-llc>, Exhibit D); 2) PRECISION GUIDED MARKETING INC (<http://www.manta.com/c/mm7777n/precision-guided-marketing-inc>, Exhibit E); and 3) PRECISION GUIDED MARKETING, LLC (<http://www.bizapedia.com/md/PRECISION-GUIDED-MARKETING-LLC.html>, Exhibit F). Each of the foregoing, relating to marketing, exemplifies a *use in the marketplace* in connection with services *similar* to those of the applicant and registrant.

The foregoing third party uses thus contradict the examining attorney's conclusion relating to the strength of the cited registration based upon her search of the Office database for marks featuring the wording "PRECISION GUIDED" in connection with business services or educational services.

Thus, because the foregoing examples represent uses in the marketplace that consumers are accustomed to seeing, the resulting conclusion of the weakness of the PRECISION and GUIDED word combination cannot be discounted or given only "little weight." It thus follows that the addition of the wording SELLING and COMMUNICATIONS to the respective marks is sufficient to avoid a likelihood of confusion because the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is weak or diluted. *See, e.g., Citigroup Inc. v. Capital City Bank Group, Inc.*, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011) (affirming TTAB's holding that contemporaneous use of applicant's CAPITAL CITY BANK marks for banking and financial services, and opposer's CITIBANK marks for banking and financial services, is not likely cause confusion, based, in part, on findings that the phrase "City Bank" is frequently used in the banking industry and that "CAPITAL" is the dominant element of applicant's marks, which gives the marks a geographic connotation as well as a look and sound distinct from opposer's marks).

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II Non-similarity of the Services

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For example, the examining attorney provided a URL for <http://www.dragonsearchmarketing.com/audits-analysis/web-traffic-analysis/> purporting to show "advertising marketing analysis services as well as training services" originating from the same. Applicant notes that the examining attorney has merely

recited “training services” in the foregoing recitation without relating those training services with those provided by applicant. Assuming, arguendo, that the examining attorney was reciting applicant’s BUSINESS TRAINING IN THE FIELD OF SALES METHODS AND SALES IMPROVEMENT, the Dragon Search website of the URL includes no such reference.

While the website of the URL recites “digital marketing services” and “training and workshops,” a review of the web site by applicant yielded that such training and workshops did not include sales training, but instead included “Social Media Marketing Training,” “SEO Training,” “Digital Advertising Training,” “Google Analytics Training” and a “Content Creation & Marketing Workshop.” As such, the Dragon Search web site does not support the examining attorney’s assertion that applicant’s and registrants services typically originate from a common source.

The examining attorney also provided a URL for <http://marketingg2.com/company/> purporting to show “advertising marketing analysis and business training services” originating from the same source. Applicant notes that the examining attorney has merely recited “business training services” in the foregoing recitation without relating those training services with those provided by applicant. Assuming, arguendo, that the examining attorney was reciting applicant’s BUSINESS TRAINING IN THE FIELD OF SALES METHODS AND SALE IMPROVEMENT, the Marketing G2 website of the URL includes no such reference.

While the website of the URL recites “marketing, analysis, training and site hosting,” a review of the web site by applicant yielded that such training did not include sales training. As such, the Marketing G2 web site does not support the examining attorney’s assertion that applicant’s and registrants services typically originate from a common source.

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Applicant notes that the examining attorney has attached screen shots for web sites, namely, www.officesuitestrategies.com and www.aspireconsultingpro.com, without providing any supporting explanation or arguments relating to these websites within her final action. Applicant thus respectfully requests that the examining attorney provide, within the written record, the analysis underlying these two exhibits.

Assuming that these two web sites were provided in further support of the examining attorney’s “similarity of goods/services” arguments, the Aspire Consulting website provides no recitation of applicant’s sales training whatsoever. As such, the Aspire Consulting web site does not support the examining attorney’s assertion that applicant’s and registrants services typically originate from a common source.

Applicant acknowledges that the examining attorney has also attached evidence from the USPTO’s X-Search database consisting of a number of third-party registrations purporting to show “that the services listed therein, namely marketing analysis, business training and educational services, are of a kind that may emanate from a single source under a single mark.” However, applicant notes that the examining

attorney has merely recited “business training and educational services” in the foregoing recitation without relating those training services to those provided by applicant. Assuming, arguendo, that the examining attorney was reciting applicant’s BUSINESS TRAINING IN THE FIELD OF SALES METHODS AND SALES IMPROVEMENT, many of the third party registrations cited by the examining attorney include no such same or similar recitation.

For example, the following registrations cited by the examining attorney fail to recite SALES METHOD AND SALES IMPROVEMENT related training (or anything involving sales training): registration no. 3595873 for the mark SUPPORTFUNCTIONS; registration no. 3937128 for the mark STRATEGIC MARLETING RESULTANTS; AND registration no 4628016 for the mark ENABLING EXPERIENCES THAT MATTER; REGISTRATION NO. 4749183 for the mark VISION SURROGATE. As such, the cited registrations do not support the examining attorney’s assertion that applicant’s and registrants services typically originate from a common source.

With further regard to same or similar services, the examining attorney has asserted that the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. However, circumstances suggesting care in purchasing may nonetheless tend to minimize the likelihood of confusion. *See, e.g., In re N.A.D., Inc.*, 224 USPQ 969, 971 (Fed. Cir. 1985) (concluding that, because only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED); *In re Homeland Vinyl Prods., Inc.*, 81 USPQ2d 1378, 1380, 1383 (TTAB 2006).

Applicant notes that the examining attorney has attached trademark registrations, i.e. registration no. 2951125 for the mark REAL TIME INTELLIGENCE FOR PRECISION GUIDED SYSTEMS; registration no 2959205 for the mark SWCE REAL TIME INTELLIGENCE FOR PRECISION GUIDED SYSTEMS; registration no. 4594575 for the mark PRECISION GUIDED THEREAPY; and registration no. 4594674 for the mark PG PRECISION GUIDED, without providing any supporting explanation or arguments relating to these registrations within her final action. Applicant thus respectfully requests that the examining attorney provide, within the written record, the analysis underlying these four exhibits.

III. Final Action Premature

Final action is appropriate when a clear issue has been developed between the examining attorney and the applicant, i.e., the examining attorney has previously raised all outstanding issues and the applicant has had an opportunity to respond to them. *TMEP* 714.03. In view of the examining attorney’s unsupported exhibits, namely the aforementioned web sites and registrations attached to the final action without any underlying argument or explanation, applicant respectfully submits that such exhibits raise issues to which applicant has not yet had the opportunity to respond.

Applicant, while the application remains pending before the examining attorney, *TMEP* 714.06, thus respectfully requests that she issue a new action providing arguments underlying the exhibits and/or otherwise explaining them and making them properly of record within the present application.

EVIDENCE

Evidence in the nature of Exhibits A, B and C are printouts of US trademark registrations supporting trademark weakness arguments made within the Request. Exhibits D, E and F are printouts of internet websites supporting trademark weakness arguments made within the Request. has been attached.

Original PDF file:

[evi_7212820277-20151204232512379258 . EXHIBIT_A.pdf](#)

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[Evidence-1](#)

[Evidence-2](#)

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[evi_7212820277-20151204232512379258 . EXHIBIT F.pdf](#)

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SIGNATURE(S)

Request for Reconsideration Signature

Signature: /David A. Gottardo/ Date: 12/04/2015

Signatory's Name: David A. Gottardo

Signatory's Position: Attorney of record, IL and WI bar member.

Signatory's Phone Number: 708-763-9526

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86353102

Internet Transmission Date: Fri Dec 04 23:49:57 EST 2015

TEAS Stamp: USPTO/RFR-XX.XXX.XXX.XX-2015120423495759

0213-86353102-540ae122f6b2377795c44b112a

f9b8c943b0c163a9b298d81a5a24c1deedd643-N
/A-N/A-20151204232512379258

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[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)[Logout](#) Please logout when you are done to release system resources allocated for you.[Start](#) List At: _____ OR [Jump](#) to record: **Record 1 out of 3**[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)**PRECISION GUIDED THERAPY****Word Mark****PRECISION GUIDED THERAPY****Goods and Services**

IC 010. US 026 039 044. G & S: Medical systems and devices for diagnostics, therapeutics and medical imaging, namely, multi-modal intravascular medical systems primarily comprised of catheters and medical guidewires and also includes computer software for receiving, processing, transmitting and displaying physiological data and images, computer hardware and electrical controllers for use therewith while connected to patients during medical treatments and medical diagnostics. FIRST USE: 20130700. FIRST USE IN COMMERCE: 20130700

Standard Characters Claimed**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

Serial Number 85802320**Filing Date** December 13, 2012**Current Basis** 1A**Original Filing Basis** 1B**Date Amended to Current Register** June 12, 2014**Registration Number** 4594575**Registration Date** August 26, 2014**Owner** (REGISTRANT) Volcano Corporation CORPORATION DELAWARE 3721 Valley Centre Drive Suite 500 San Diego CALIFORNIA 92130

Attorney of Record Dean R. Karau
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "THERAPY" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register SUPPLEMENTAL
Live/Dead Indicator LIVE

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PRECISION GUIDED MUSICIANS

Word Mark	PRECISION GUIDED MUSICIANS
Goods and Services	(ABANDONED) IC 009. US 021 023 026 036 038. G & S: Sunglasses; computer application software for mobile phones, namely, software for computer gaming and social networking; glasses for watching three-dimensional motion pictures
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85520764
Filing Date	January 19, 2012
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	September 11, 2012
Owner	(APPLICANT) Perry Farrell INDIVIDUAL UNITED STATES 16000 Ventura Boulevard c/o David Weise & Associates Encino CALIFORNIA 91436
Attorney of Record	Robert A. Becker
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MUSICIANS" FOR THE GOODS "COMPUTER APPLICATION SOFTWARE FOR MOBILE PHONES, NAMELY, SOFTWARE FOR COMPUTER GAMING AND SOCIAL NETWORKING" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Abandonment Date	June 9, 2014

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PRECISION-GUIDED COMMUNICATIONS

**Word Mark
Goods and
Services****PRECISION-GUIDED COMMUNICATIONS**

IC 016. US 002 005 022 023 029 037 038 050. G & S: PRINTED MARKETING ANALYSIS MANUAL. FIRST USE: 20080100. FIRST USE IN COMMERCE: 20080100

IC 035. US 100 101 102. G & S: MARKETING ANALYSIS SERVICES. FIRST USE: 20080100. FIRST USE IN COMMERCE: 20080100

IC 041. US 100 101 107. G & S: EDUCATIONAL SERVICES, NAMELY, PROVIDING INSTRUCTION IN THE NATURE OF WORKSHOPS AND SEMINARS ON MARKETING ANALYSIS. FIRST USE: 20080100. FIRST USE IN COMMERCE: 20080100

**Standard
Characters
Claimed****Mark Drawing
Code**

(4) STANDARD CHARACTER MARK

Serial Number

85070106

Filing Date

June 23, 2010

Current Basis

1A

**Original Filing
Basis**

1A

**Published for
Opposition**

November 8, 2011

**Registration
Number**

4095275

Registration Date

February 7, 2012

Owner

(REGISTRANT) PhaseOne Communications, Inc. CORPORATION DELAWARE Suite 450 6080 Center Drive Los Angeles CALIFORNIA 90045

**Assignment
Recorded**

ASSIGNMENT RECORDED

Attorney of Record	Nikki M. Dossman
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMMUNICATIONS" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK. SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Categorized under Computer Consultants. Our records show it was established in 2009 and incorporated in Florida. Current estimates show this company has an annual revenue of \$5000 and employs a staff of approximately 1.

Company Contacts
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Laurence A Gordon
Chief Executive Officer

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Seamless Mobility fromVonageBusinessThe business of betterLEARN MORE

Business Information

Location Type	Single Location
Year Established	2009
Annual Revenue Estimate	\$5000

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Precision Guided Marketing Inc

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More Details for Precision Guided Marketing Inc:

Categorized under Marketing Consultants. Our records show it was established in 2003 and incorporated in Georgia. Current estimates show this company has an annual revenue of \$4000 and employs a staff of approximately 1.

Company Contacts

Is this your business? [Claim This Profile](#)

Ralph C Watson

Chief Executive Officer

Search for more contacts

The re 99,995

Means more time spent in the black.

Business Information

Location Type

Single Location

Year Established

2003

Internet Explorer

Google Chrome

Firefox

Opera

Microsoft Edge

Google

YouTube

Facebook

Twitter

LinkedIn

Instagram

WhatsApp

Telegram

Signal

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Zoom

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